

**RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF FIRE PREVENTION**

CHAPTER 0780-2-19

AUDITS OF LOCAL CODES ENFORCEMENT AGENCIES

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0780-2-19-.01 AUTHORITY. The state fire marshal is authorized by T.C.A. § 68-120-101 to establish rules necessary to effectuate the audit at least once every three years of records and transactions of each local government which chooses to enforce its own code pursuant to T.C.A. § 68-120-101(b)(2). The purpose of the audit shall be to ensure that the local government is adequately enforcing its code, and is performing any reviews of construction plans and specifications required by the state fire marshal under subsection (d), T.C.A. § 68-120-101.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.02 DEFINITIONS. For the purposes of this chapter, the following definitions are applicable:

- (1) "State Fire Marshal" means the commissioner of the Department of Commerce and Insurance or his or her designee.
- (2) "Exempt Jurisdiction" means a local governmental jurisdiction that has complied with the requirements of T.C.A. § 68-120-101(b)(2).
- (3) "Adequate Enforcement" is the performance rating that is given to an exempt jurisdiction that has demonstrated during the audit process provided for herein that it is adequately performing its building code enforcement programs.
- (4) "Marginal Enforcement" is the performance rating that is given to an exempt jurisdiction that has demonstrated during the audit process provided for herein that, although it is not adequately performing its building code enforcement programs, public safety is not jeopardized by such inadequate performance such that the danger to the public is imminent.
- (5) "Inadequate Enforcement" is the performance rating that is given to a locality that has demonstrated during the audit process provided for herein that it is not adequately performing its building code enforcement programs and that such failure may result in imminent danger to the public.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.03 AUDIT TEAM. The state fire marshal shall establish an audit team to perform the quality audit of an exempt jurisdiction.

(Rule 0780-2-19-.03, continued)

- (1) The audit team should be composed of one administrator, one plans examiner, and one field inspector, and any other staff deemed necessary by the state fire marshal.
- (2) The state fire marshal shall name a team leader to be the person who will be responsible for the audit.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.04 NOTICE. The audit team shall initiate written contact with each exempt jurisdiction no less than once every three (3) years to explain the audit process and to establish a date and time for an on-site audit at the jurisdiction's headquarters. The date established will be confirmed in writing and delivered to the exempt jurisdiction confirming the date and time of the audit and explaining its purpose.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.05 QUESTIONNAIRE.

- (1) A questionnaire may be attached to the written notice described in rule 0780-2-19-.04.
- (2) The questionnaire shall be completed by the responsible official of the exempt jurisdiction.
- (3) The questionnaire may request at a minimum the following information:
 - (a) The name and title, mailing address, and telephone number of the official accountable for the exempt jurisdiction's codes enforcement operation;
 - (b) The name, address, and main telephone number of the head of the exempt jurisdiction's highest governing body;
 - (c) The edition date and type of building and fire codes currently enforced by the exempt jurisdiction, along with any ordinances and/or amendments to the codes enforced by the exempt jurisdiction;
 - (d) A flow chart identifying major activities of the exempt jurisdiction's enforcement program from plans submittal to the issuance of a certificate of occupancy, to enforcement against non-approved construction projects;
 - (e) An organizational chart of the exempt jurisdiction with staff credentials;
 - (f) A list of the exempt jurisdiction's building and fire officials with certification numbers who are responsible for the exempt jurisdiction's plans review and field inspections;
 - (g) The types of building occupancies mandating plans review and approvals under the exempt jurisdiction's rules and laws;
 - (h) The exempt jurisdiction's record keeping and archiving procedures;
 - (i) Certification that the locality has not exempted any portions of the building and fire codes identified in (c).
- (4) The audit questionnaire shall be completed by the exempt jurisdiction and returned to the state fire marshal within thirty (30) days from the date of receipt.

(Rule 0780-2-19-.05, continued)

- (5) The audit team may assess the exempt jurisdiction's codes and all amendments thereto as provided in the exempt jurisdiction's answer to the questionnaire in order to determine whether the codes remain as stringent as what was originally certified to the state fire marshal under T.C.A. § 68-120-101(b)(2)(A).

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.06 ON-SITE AUDIT.

- (1) At the scheduled date and time, the audit team will conduct an on-site audit.
- (2) During the on-site audit, the audit team will review the exempt jurisdiction's codes enforcement process. This review may include, but not be restricted to, coverage of the following processes:
 - (a) initial plans submittal and application;
 - (b) plans review;
 - (c) other local agency reviews;
 - (d) plans approval;
 - (e) permitting;
 - (f) field inspections;
 - (g) the exempt jurisdiction's enforcement process;
 - (h) record filing;
 - (i) plans archiving;
 - (j) issuance of occupancy permits.
- (3) During the on-site audit, the audit team may select a recently completed building, a building currently under construction, or both a recently completed building and a building currently under construction, that went through the exempt jurisdiction's codes enforcement process, or any other structure that went through the locality's codes enforcement process, as deemed appropriate by the state fire marshal for the purpose of determining the effectiveness of the exempt jurisdiction's plans review inspection program. Only those occupancies that would be subject to review by the state fire marshal in non-exempt jurisdictions will be reviewed during the audit.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.07 STANDARDS FOR REVIEWING PLANS AND CODES. Review of plans for a recently completed building(s) or a building(s) currently under construction will consist of applying the exempt jurisdiction's building and fire codes. The review may include but not be limited to the following:

- (1) building construction type;
- (2) building height and area;
- (3) occupancy classification;

(Rule 0780-2-19-.07, continued)

- (4) fire resistive assemblies for walls, floors, enclosures, shafts, stairs, corridors, hazardous locations, and rated walls to deck;
- (5) firestopping of penetrations through rated walls or floors;
- (6) adequacy and capacity of the means of egress;
- (7) automatic fire suppression sprinkler, standpipe, fire pump, and fire hydrant systems, and fixed suppression systems;
- (8) fire and smoke detection systems, supervisory systems, and hold open devices;
- (9) emergency lights; and
- (10) exit signs.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.08 FIELD INSPECTION. The audit team may conduct a field inspection of the selected project(s) to compare the approved construction documents with what was built or is being built and to verify code compliance. A local building official may be invited to accompany the audit team during any inspection performed in the exempt city auditing process.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.09 EXIT REVIEW MEETING AND AUDIT REPORT. Upon completion of the audit, the audit team may conduct an exit review meeting with representatives of the exempt jurisdiction in order to discuss any issues found during the audit and to put the representatives on notice that an audit report will be issued documenting the audit and outlining any recommendations. The audit report shall be prepared and signed by the audit team leader and sent to the exempt jurisdiction and the leader of the jurisdiction's highest governing body.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.10 AUDIT REPORT – CONTENTS.

- (1) The report should contain a brief statement of the on-site audit date with a determination of the adequacy of the exempt jurisdiction's codes enforcement program with an overall performance rating of adequate enforcement, marginal enforcement, or inadequate enforcement. After explaining the scope of the audit and identifying the audit team, the report will contain assessments of the following four major components of the audit report.
 - (a) Audit Questionnaire Review – The report will:
 1. identify the current codes that were reported in the questionnaire as being enforced, along with any corresponding ordinances referenced;
 2. assess whether the questionnaire response is adequately responsive to whether the appropriate staff have current state inspector certifications;
 3. identify whether any new employees have received appropriate state certifications when performing building or fire codes inspections; and

(Rule 0780-2-19-.10, continued)

4. identify any needed clarifications.
 - (b) On-Site Audit: The report will briefly describe the current legal process that is in place in the exempt jurisdiction to ensure the enforcement of building and fire codes for both approved construction projects and for unauthorized construction projects.
 - (c) Findings: The report will detail positive performance areas and inadequate areas of performance, citing any laws, regulations, or standards that are not met by the exempt jurisdiction's current system of building codes enforcement.
 - (d) Recommendation: The report may include a request that a plan of corrective action be submitted to the state fire marshal within thirty (30) days following the receipt of the audit report. The plan of corrective action shall include a statement of the exempt jurisdiction's intent to correct the inadequate areas of performances as identified in the findings and a statement that details how and when each deficiency will be corrected. The recommendation may also list any other relevant recommendations that benefit the codes enforcement operation.
- (2) The audit reports may be used in subsequent audits that are performed pursuant to this chapter as an aid in identifying whether improvements have been made since prior audits, whether the approved plan of corrective action has been followed, and for listing any deficiencies that have not been corrected based on the previous audit report.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.11 PLAN OF CORRECTIVE ACTION.

- (1) When the audit report cites any deficiencies, the jurisdiction shall submit a response to the state fire marshal to the audit report no later than thirty (30) days after receipt. The response shall be in the form of a plan of corrective action that details how and when each deficiency will be corrected.
- (2) An exempt jurisdiction that seeks an extension of the deadline must ensure delivery of a written request for an extension to the state fire marshal before the passage of the deadline for responding to the audit report.
- (3) The state fire marshal will review the plan of corrective action submitted by the exempt jurisdiction and issue a written response approving or denying the plan of corrective action.
- (4) The state fire marshal will make any denial of a plan of corrective action in writing and will include with it any details necessary to bring the plan of corrective action into an acceptable condition.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.12 INADEQUATE ENFORCEMENT.

- (1) The state fire marshal will notify the exempt jurisdiction of any finding of inadequacy during the on-site exit review meeting following the follow-up audit. The audit team leader will send a written notice of any finding of inadequate enforcement to the exempt jurisdiction's chief enforcement officer and to the leader of its highest governing body. In that notice, the state fire marshal may, following the methods prescribed in T.C.A. § 4-5-320(c), require said exempt jurisdiction to immediately cease performance in any area in which a grade of inadequate enforcement is received upon receipt of the written notice.

(Rule 0780-2-19-.12, continued)

- (2) The audit team may perform a follow-up audit at a time of its choosing after issuing a finding of inadequate enforcement in order to evaluate the progress made to improve the codes enforcement program. The follow-up audit will be conducted in the same manner as the audit process as outlined in rules 0780-2-19-.03 through 0780-2-19-.11.
- (3) If the follow-up audit results in a follow-up audit report finding of adequate enforcement or marginal enforcement, then the jurisdiction may resume independent codes enforcement activity under T.C.A. § 68-120-101 for those areas in which it was formerly required to cease due to the written notice of the state fire marshal after an original grade of inadequate enforcement.

Authority: T.C.A. § 68-120-101(b)(3)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.

0780-2-19-.13 LOSS OF EXEMPT STATUS.

- (1) Within ten (10) days of receiving a finding of “inadequate enforcement”, the jurisdiction may make a written request for an informal conference with the state fire marshal.
- (2) Should there be no request for an informal conference, a contested case hearing under the Uniform Administrative Procedures Act will be scheduled to determine the status of the jurisdiction’s enforcement programs.
- (3) If, pursuant to a contested case hearing, it is found that the exempt jurisdiction’s codes enforcement program is inadequate, the state fire marshal may take any lawful action, up to and including the suspension or revocation of the jurisdiction’s authority to independently review construction plans and specifications through an independent codes enforcement program that is maintained under the authority of T.C.A. §§ 68-120-101(b)(2).

Authority: T.C.A. §§ 68-120-101(b)(3)(B) and 68-120-101(b)(4)(B). **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005.